

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DALE WYCOFF)	
Claimant)	
VS.)	
)	Docket No. 211,264
OASIS CAR WASH SYSTEMS, INC.)	
Respondent)	
AND)	
)	
CONTINENTAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Steven J. Howard on January 28, 1999.

APPEARANCES

Carlton W. Kennard of Pittsburg, Kansas, appeared on behalf of claimant. Michael D. Streit of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The Award denies claimant's request for benefits based on the ALJ's finding that claimant has failed to prove that the alleged injury arose out of and in the course of claimant's employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board finds and concludes the Award should be affirmed.

Claimant alleged and testified that he injured his left ankle at work on July 17, 1995, when his foot rolled off a pipe. He claims he notified Mr. Gary Shockley. The evidence indicates Mr. Shockley was not claimant's direct supervisor but was responsible for accident reports. Although at one point claimant testified he went to Dr. Lynch a few days later, he also testified he did not seek medical care until September 1995 because he initially thought it was only a sprain and he did not like to go to the doctor.

The ALJ found claimant did not sustain accidental injury arising out of and in the course of his employment. The ALJ noted claimant was receiving treatment during this time for a shoulder injury and did not seem reluctant to obtain medical care. In direct conflict with claimant's testimony, Mr. Shockley denied claimant notified him of the accident. The ALJ also noted the inconsistencies in claimant's testimony about when he first sought medical treatment. Finally, claimant testified that he was limping at work and could hardly walk. According to claimant, he sometimes had to lean on something in order to walk. Ms. Gloria M. Williams, who also worked for respondent, testified she occasionally observed claimant at work during this period but did not see him limp. For these reasons, the ALJ found claimant's version of the events lacked credibility. The Board agrees and affirms the finding that claimant has not proven he sustained an accidental injury arising out of and in the course of his employment for respondent.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Steven J. Howard on January 28, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of November 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carlton W. Kennard, Pittsburg, KS
Michael D. Streit, Wichita, KS
Steven J. Howard, Administrative Law Judge

DALE WYCOFF

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Philip S. Harness, Director